

IN THE MATTER OF	:	BEFORE THE
HIGH'S OF BALTIMORE, INC.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-045C

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DECISION AND ORDER

On November 24, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of High's of Baltimore for a conditional use to redevelop an existing gasoline service station and convenience store in a B-2 (Business: General) zoning district, pursuant to Section 131.N.25 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Andrew R. Robinson, Esquire, represented the Petitioner. Brian Darnell and Wayne Newton testified on behalf of the Petitioner. Francis Rura and Susan Ann Williams Rura testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 2nd Election District and is bound by Rogers Avenue on the west and Normandy Center Drive on the south. It is referenced on Tax Map 18 as Parcel 75. The Technical Staff Report ("TSR") further identifies the subject property as a 31-247

square-foot portion of Parcel 75B (the "Site"). The Site is also known as 3045 Rogers Avenue.

2. The irregularly shaped Site is currently improved with a gasoline service station and a 2,000-square foot convenience store. The convenience store is situated in the northern area and faces south (toward Normandy Center Drive). The fuel island/canopy is situated in close proximity to Normandy Center Drive. These improvements will be removed,

3. The Site is largely paved with landscaped islands along the perimeter. The topography rises steeply on the north, beyond the existing retaining wall and this hillside is wooded.

4. Vicinal properties. The remainder of Parcel 75B is also zoned B-2 and is improved with an office building on the north side of Normandy Center Drive and a retail/commercial center, fitness center, and various other businesses on the drive's south side. Parcel 75A to the northeast is zoned B-2 and is improved with the Normandy Shopping Center, which includes a grocery store, several restaurants, and other uses.

5. The properties across Rogers Avenue are predominately zoned R-A-15 (Residential: Apartments), including the large Howard Crossing Apartments complex (formerly Town and Country Apartments). To their south are two R-A-15-zoned properties improved with single-family detached dwellings.

6. Roads. Rogers Avenue has one travel lane in each direction and a variable paving width within a variable right-of-way, acceleration and deceleration lanes, and turning lanes. The posted speed limit is 30 MPH. Normandy Center Drive has one travel lane in each direction.

7. The Property is served by public water and sewer.

8. The 2000 General Plan Policies Map 2000-2020 designates the Property as "Residential/Redevelopment Corridor" The 2000 General Plan Transportation Map 2000-2020 depicts Rogers Avenue as a Minor Arterial.¹ Normandy Center Drive is a private road.

9. The Petitioner proposes to remove the stand-alone canopy covering the gasoline service station operation and replace it with a 30' by 92', freestanding canopy with pump islands situated parallel to Rogers Avenue. The Petitioner also proposes to raze the existing convenience store and replace it with a 3,500-square foot store. The store's front will be oriented toward Rogers Avenue. The combination of uses is permitted subject to the criteria in Section 131.N.25.i, as discussed below.

10. The gasoline service station operation would encompass four pump islands, each equipped with a single, two-hose multi-product dispenser allowing eight vehicles to refuel at one time. Diesel will be dispensed from a single pump island containing a dual hose diesel dispenser. Kerosene will offered a single pump dispenser located on the landscaped area south of the pumping islands. The Petitioner is also proposing to sell propane (an exchange program) just outside the convenience store. The existing driveways from Rogers Avenue and Normandy Drive will provide access. A total of 17 parking spaces are proposed, including one disabled space, 11 in front of the store and 3 along Normandy Center Drive. The Petitioner is also proposing a retaining wall on the Site's north side, which would extend 55 feet from the existing wall toward Rogers Avenue. An enclosed dumpster is proposed to the store's south.

11. The Conditional Use would continue to operate under the existing schedule, from 5:30 a.m. to 11:00 p.m., seven days a week. The same store staffing will also continue: two full-

¹ The Transportation Plan depicts a proposed realignment of Rogers Road and erroneously identifies it a local road. The realignment plan has been abandoned.

time employees, and four part-time employees working two shifts, with a maximum of three employees during any one shift.

12. Brian Darnell testified that High's is modernizing its stores and that the proposed convenience store and pumping island canopy would be updated and redesigned as shown in Petitioner's Exhibits 4 and 5. He also stated that the pumping island lighting would be directed downward.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. General Plan. The proposed use is consistent with General Plan Chapter 5, Community Conservation and Enhancement and the recommendations of Policy 5:10, which addresses the design improvement of commercial areas, and Policy 5:11, which addresses the need to make strip commercial-industrial corridors more efficient and attractive. The modernization of the proposed uses will be harmonious with the area, which is primarily commercial. The Site is adequate to support the use and provides more parking spaces than necessary. Accordingly, the nature and intensity of operation, the size of the Property in relation to the use, and the location of the Property with respect to access streets, are such that the uses will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

The petition proposes a conditional use in combination with a permitted use, a 3,500-square foot convenience store. The proposed uses comply with all setback requirements. The Property's acreage will support the proposed combination of uses and the Conditional Use

Plan depicts more parking spaces than are required. The pump islands will be physically separated from adjacent properties and uses and buffered from vicinal properties by perimeter landscaping. Consequently, the proposed use is an appropriate intensification of use and scale, given the adequacy of the existing and proposed buffers and setbacks, in accordance with Section 131.B.1.b.

2. Adverse Effects. The Petitioner has met its burden of presenting sufficient evidence to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a gasoline service station in a B-2 zone. The petition states that only the physical conditions typically associated with a gasoline service station are anticipated. Although there are residential properties in the vicinity, the proposed use is only slightly larger than the existing operation on the Site. This part of Rogers Avenue and the larger neighborhood carries substantial automotive and truck traffic, and the proposed use will not increase the intensity of area traffic or other physical conditions. Because the gasoline service station is primarily intended to serve travelers along Rogers Avenue, the additional traffic is anticipated to be modest.

Any noise, odor, or light generated by the use will be attenuated by distance and will not be greater than those ordinarily associated with such a use. The use will therefore not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a gasoline service station in a B-2 zone, in accordance with Section 131.B.2.a.

3. The proposed structures and uses will meet all setback requirements and height restrictions. The landscaping exceeds minimum requirements. Although Susan Rura testified

that the landscaping would attract rodents, she presented no evidence of same in the area. I conclude the nature and landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or other applicable zones, in accordance with accordance with Section 131.B.2.b

4. The parking spaces shown on the Conditional Use Plan exceed the 10 spaces required. The spaces and the Dumpster pads will be screened from public roads to minimize adverse impacts on adjacent properties. The petition complies with Section 131.B.2.c.

5. The existing ingress/egress drives will continue to provide safe access with adequate sight distance, based on actual conditions, in compliance with Section 131.B.2.d.

II. Specific Criteria for Gasoline Service Stations (Section 131.N.25)

1. Section 131.N.25.a requires the Petitioner to demonstrate that: (1) the use will not adversely affect the general welfare or logical development of the neighborhood or area in which the station is proposed, and (2) the use will not have a blighting influence because of a proliferation of gasoline service stations within a particular area.

The closest gasoline service stations are located on US 40. On westbound US 40 there is a station about three miles east of the Site, on Governors Run Road, and one between Rogers Avenue and North Ridge Road, about 1.5 miles west of the Site. On eastbound US 40, there is a station at Wheaton Way, about 1.5 miles east of the Site and two at the Saint Johns intersection. Because the proposed conditional use is an expansion of an almost identical use, I conclude the use will not adversely affect the area's general welfare or logical development, nor have a blighting influence because of a proliferation of gasoline service stations within a particular area.

2. The 31,247 square-foot Site on the 8.9-acre Parcel exceeds the minimum lot size of 20,000 square feet, as required by Section 131.N.25.b.

3. The Site has about 260 feet of frontage on Rogers Avenue and about 135 feet of frontage on Normandy Center Drive, in accordance with Section 131.N.25.c

4. Based on the Conditional Use Plan, a minimum of 6,249 square feet of landscaping is required to meet the 20 percent landscaping requirement. According to the TSR, the plan proposes about 21 percent, including the landscaped medians, the sloped area on the Site's north side and the landscape island in the parking lot. (Petitioner's Exhibit 9). The petition complies with Section 131.N.25.d.

5. The Property does not adjoin a residential section. Section 131.N.25.e does not apply.

6. An enclosed dumpster is depicted on the Conditional Use Plan, in accordance with Section 131.N.25.f.

7. The existing access drives provide adequate sight distance, in accordance with Section 131.N.25.g.

8. Operation of the Use

a. Mr. Darnell testified that outside operations are limited to the dispensing of gasoline, diesel fuel, air, vacuuming, and kerosene. The Conditional Use Plan depicts the air, vacuum and kerosene pump area in the Normandy Center Drive median adjacent to a parking space. Because the location of a marked parking space next to these operations poses potential access and safety issues, I am conditioning my approval of the requested use in part on the elimination of this space and the screening of these outside operations. Subject to these conditions, the requested use accords with Section 131.N.25.h(1).

b. The proposed sale of propane just to the left (south) of the entrance shall be screened, in accordance with Section 131.N.25.h(2).

c. The Petitioner will maintain the premises at all times in a clean and orderly condition including the care and replacement of plant materials required in the landscaping plan, as required by Section 131.N.25.h(3).

d. The proposed use is not adjacent to a residential district; therefore, Section 131.N.25.h(4) does not apply.

9. Other Uses. A convenience store in a B-2 zone may be no larger than 3,500 gross square feet. The store depicted on the Conditional Use Plan is 3,500 gross square feet in area. The area of the store, loading, and parking spaces is about 6,750 square feet. Combined with the 20,000 square foot minimum area for the gasoline service station, the minimum necessary lot size is 26,750 square feet. Because the Site is about 31,247 square feet in area, it accords with Section 131.N.25.i(2).

ORDER

Based upon the foregoing, it is this **8th day of December 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of High's of Baltimore, Inc. for a gasoline service station conditional use and convenience store on the same Site, in a B-2 (Business: General) Zoning District is hereby **GRANTED;**

Provided, however, that:

1. The conditional use will apply only to the uses and structures as described in the petition and Conditional Use Plan submitted, and not to any other activities, uses, structures, or additions on the Property.

2. All dumpster pads shall be enclosed with a fence.

3. Outside operations are limited to dispensing gasoline, diesel fuel, pressurized air, vacuuming, and kerosene.

4. All outside sales of propane shall be screened.

5. The air/vacuum/kerosene dispensing area shall be screened.

6. The parking space adjacent to the air/vacuum/kerosene dispensing area shall be eliminated.

7. Abandonment. The premises (including landscaping) of the gasoline service station, if not in continuous operation or abandoned shall be maintained in the same manner as is required under these regulations for operating gasoline service stations.

8. Voidance of the Use. The gasoline service station conditional use shall become void upon notice of abandonment by the owner. If notice of abandonment is not received, but it is

determined by the Department of Planning and Zoning that the gasoline service station has not been in continuous operation for a period of twelve months, a revocation hearing shall be initiated by the Department of Planning and Zoning in accordance with the procedures set forth in Section 131.L. For purposes of this subsection, "continuous operation" shall mean operation as a gasoline service station at least eight hours per day, five days per week.

9. Removal. If the gasoline service station is abandoned and the conditional use becomes void as provided above, all gasoline pumps, pump island canopies, and other improvements (not including buildings) shall be removed from the site within six months of the date the conditional use becomes void.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

MICHELE L LEFAIVRE
Michele L. LeFaivre

Date Mailed: 12/10/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.